IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 12843 of 2007(D)

PETITIONER:

K.R.LATHA,W/O.PEETHAMBARAN,BLAVATH HOUSE, JANATHA ROAD,VYTTILA ERNAKULAM COCHIN-682 019.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS:

1. **THE DISTRICT COLLECTOR,ERNAKULAM.**
2. **THE DISTRICT SURVEY SUPERINTENDENT, OFFICE OF THE DISTRICT SURVEY SUPERINTENDENT, ERNAKULAM.**
3. **THE VILLAGE OFFICER,VILLAGE OFFICE, MARADU,ERNAKULAM DISTRICT.**
4. **P.J.MARY,PALAPARAMBIL HOUSE,MARADU, NOW RESIDING AT VILAYIL VEEDU,UDAYAMPEROOR, ERNAKULAM.**

***ADDL.R5 IS IMPLEADED:**

R5. RANJITMON K.R., AGED 35 YRS, S/O.K.C.REJIMON, KALPADAKKAL HOUSE, BUND ROAD, VTJ ENCLAVE, VI/472 A, MARADU.

(*ADDL.R5 IS IMPLEADED AS PER ORDER DTD. 26/06/2007 IN I.A.NO.8459/07)

BY ADV. SMT.MARY BENJEMIN
SRI.V.PHILIP MATHEW
BY GOVERNMENT PLEADER SRI. M.R. SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007 ALONG WITH WPC NO. 11483 OF 2007, THE COURT ON 19/12/2007 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SAID SALE DEED NO.4837/2003 OF SRO, MARADU DTD. 8/12/2003 EXECUTED BY SMT. LILLY VINCENT IN FAVOUR OF THE PETITIONER.

EXT.P2: COPY OF THE ENCUMBRANCE CERTIFICATE DTD. 5/12/2003 ISSUED BY SRO, MARADU.

EXT.P3: COPY OF THE SAID SALE DEED DTD. 27/09/1993 OF SRO, MARADU EXECUTED BY SMT. LYSA MORRIS, KUZHUVILAPARAMBIL IN FAVOUR OF SMT. LILLY VINCENT.

EXT.P4: COPY OF SALE DEED OF SRO, MARADU EXECUTED BY KODIYAN, IN FAVOUR OF LYSA MORRIS ON 1/02/1989.

EXT.P5: COPY OF BASIC TAX RECEIPT 3283129 DTD. 5/12/2003 ISSUED FROM THE VILLAGE OFFICE, MARADU.

EXT.P5(A): COPY OF BASIC TAX RECEIPT NO.2200550 DTD. 17/01/2004 ISSUED FROM THE VILLAGE OFFICE, MARADU.

EXT.P5(B): COPY OF BASIC TAX RECEIPT NO.5454806 DTD. 25/08/2006 ISSUED FROM THE VILLAGE OFFICE, MARADU.

EXT.P6: COPY OF THE NOTICE DTD. 25/10/2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE ORDER NO.1435/2006 DTD. 27/03/2007 PASSED BY THE 1ST RESPONDENT.

EXT.P8: COPY OF THE JUDGMENT DTD. 25/08/206 IN WPC.NO14591 OF 2006 OF THIS HON'BLE COURT.

EXT.P9: COPY OF THE POSTAL COVER ADDRESSED TO THE 4TH RESPONDENT.

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): COPY OF KUDIKIDAPPU AS PER CERTIFICATE O.A.162/82 DTD. 1/09/86.

EXT.R4(B): COPY OF RECEIPT NO.123 DTD. 1/09/1986.

EXT.R4(C): COPY OF COMMUNICATION OF THE DISTRICT COLLECTOR ADDRESSED TO THE GOVERNMENT DTD. 28/06/2005.

EXT.R4(D): COPY OF THE ENCUMBRANCE CERTIFICATE FOR THE PERIOD 1/1/1986 TO 31/12/1988.

EXT.R4(E): COPY OF THE ENCUMBRANCE CERTIFICATE FOR THE PERIOD 1/1/1989 TO 14/11/1005.

EXT.R4(F): COPY OF LETTER DTD. 24/01/2006 OF RDO.

EXT.R4(G): COPY OF LETTER DTD. 24/01/2006 OF RDO TO THE 2ND RESPONDENT.

EXT.R4(H): COPY OF THE PROCEEDINGS DTD. 19/01/2007 OF THE 1ST RESPONDENT.

EXT.R4(I): COPY OF THE PROCEEDINGS DTD. 29/03/2007 OF THE 2ND RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

KSS

ANTONY DOMINIC, J.

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in W.P.(C) No. 11483/07 has constructed a house in the property purchased by him. According to the petitioner, he had purchased the property after verifying the prior title deeds and other documents and he is referring to Ext. P2 non-encumbrance certificate which also does not refer to anything other than Exts. P3 and P4 and these do not give rise to any claim for the 4th respondent herein to any portion of the property. Ext. P5 is stated to be the receipt evidencing payment of tax by the petitioner. While the petitioner makes all these claims, it is admitted that mutation was not effected in her name and that it continued to be in the name of her transferor.

4. While so, the 4th respondent claimed ownership over the property and Ext. P6 is a notice of hearing that was issued by the District Collector on a representation filed by the 4th respondent. In pursuance to this, the parties were heard and the District Collector issued Ext. R4(h) order declining to interfere with the claim ownership raised by the 4th rspondent or possession of the petitioners in these cases and directing that if at all the 4th respondent is aggrieved, remedy can be sought only from the civil court. It is stated that despite Ext. R4(h), the District Collector passed yet another order, produced as Ext. P7, directing that

mutation be effected in the name of the 4th respondent. It is challenging Ext. P7 that these writ petitions have been filed.

5. Petitioners would submit that going by Ext. P7 order of the District Collector, he was purported to be acting in implementation of a judgment of this Court in W.P.(C) No. 14591/06. This judgment has been produced as Ext. P8. Petitioners contend that in Ext.P8 judgment, referring to two documents produced therein as Exts. P4 and P5 the learned Judge has only directed these orders be taken to its logical conclusion. The documents referred to by the learned Judge as Exts. P4 and P5 are produced in this case by the 4th respondent as Exts. R4(f) and R4(g). Petitioners would contend that Exts. R4(f) and R4(g) refer to certain mistakes in re-survey and its rectification. They would therefore submit that even if Exts. R4(f) and R4(g) are to be implemented as directed in Ext. P8 judgment, that does not call for cancellation of mutation or ordering mutation be effected into the name of the 4th respondent.

6. It is also contended that following the claim of ownership raised by the 4th respondent, the District Collector issued Ext. P6 notice and Ext. R4(h) order, declining to interfere in the matter. It is stated that thereafter, without any authority of law he has issued Ext. P7 reversing the view taken in the earlier order. It is

submitted that not only that the District Collector has no power to order mutation but also as he has no power to review his own decision. It is stated that if at all any power is available under the Surveys and Boundaries Act, the remedy lies in filing a suit in terms of Section 14 thereof. On this premise, petitioners would contend that the jurisdiction assumed by the District Collector in Ext. P7 is non-existent. On these pleadings, the petitioners seek orders mainly to quash Ext. P7 referred to above.

7. The 4th respondent on the other hand refers to Ext. R4(a) purchase certificate issued under the Kerala Land Reforms Act. It is stated that her absence from the plot owned by her was capitalised by strangers who committed trespass and fabrication of records. Faced with such a situation, being a helpless widow earning a living as a sweeper she submitted several complaints to various authorities and finally a complaint made to the Chief Minister of the State was forwarded to the District Collector for necessary action. It is submitted that reports were called for and Exts. R4(f) and (g) are the reports of the Revenue Divisional Officer. She would contend that despite all this, no concrete action was forthcoming and hence a writ petition was filed which resulted in Ext. P8 judgment wherein this Court had directed that Exts. P4 and P5 be taken to its logical

conclusion.

8. Even thereafter as nothing further was done, the 4th respondent filed a contempt of court case. According to her, when the case came up for orders before this Court on 31-7-2007 the Govt. Pleader appearing on behalf of the respondents therein, produced Ext. R4(h) order. It is also stated that as the order was found to be unsatisfactory, the District Collector reconsidered the matter and thereafter issued Ext. P7 which is now challenged in these writ petitions.

9. It is submitted on behalf of the 4th respondent that this land was not involved in any transaction and the occupants who have filed these writ petitions are all trespassers and they deserve to be evicted from the property in question. The 4th respondent would therefore pray that Ext. P7 be sustained as the District Collector was only doing justice between the parties.

10. The petitioner in W.P.(C) No. 11483/07 generally adopts the contentions raised by the petitioner in W.P.(c) No. 12843/07. However, he adds that genuineness of even the very purchase certificate relied on by the 4th respondent is doubtful and in any case the authenticity of the same is yet to be proved. It is submitted that despite the transactions that have taken place and the

constructions and other activities that was openly going on in the land in question, the belated claim of ownership raised by the 4th respondent is of no substance or bonafides.

11. In the nature of the rival contentions that are raised, the only issue that calls for a decision in this case is whether Ext. P7 order of the District Collector is valid or not.

12. A reading of Ext. P7 shows that the District Collector has proceeded on the basis that in the judgment in W.P.(C) No. 14591/06 this Court had directed him to correct the mistake and restore thandaper in the name of the 4th respondent. This reasoning of the District Collector is incorrect and Ext. P8 judgment has only directed that Exts. P4 and P5 be taken to its logical conclusion. Exts. P4 and P5 mentioned in the judgment are Exts. R4 (f) and R4(g) produced along with the counter affidavit filed in this case. These orders suggest that the mistakes in resurvey be corrected so that a poor lady will not loose the property that she got recognising her kudikidappu right. Therefore, while the District Collector was not under any order to restore thandaper into the name of the 4th respondent, he was certainly required to take further steps in pursuance to Exts. R4(f) and R4(g) by getting corrected the mistakes in resurvey.

13. It is despite these orders and Ext.P8 judgment of this Court that in Ext. R4(h) order the District Collector declined to set the matters right and took the view that the 4th respondent has to approach the Civil Court to obtain relief in the matter. It this attitude of the District Collector was not found to be a satisfactory compliance of Ext. P8 judgment, when the contempt case was considered there is nothing unusual in it. It is in this background that the District Collector was compelled to review his stand and issue Ext. P7 order that is challenged in these cases.

14. The question that arises is whether Ext. P7 calls for interference in a proceedings under Article 226 of the Constitution of India. Petitioners have not challenged Ext. R4(a) purchase certificate obtained by the 4th respondent. They also have not questioned the correctness of Exts. R4(f) and R4(g). If that be the position, as rightly held by the learned Single Judge in Ext. P8 judgment, these orders will have to be taken to its logical conclusion. This is precisely what has been done in Ext. P7.

15. It is argued that once Ext. R4(h) order has been passed, the District Collector ceased to have any power in the matter. From the facts stated above, it is obvious that it was compliance with Ext.P8 judgment that the District Collector had to reconsider the

order. In my view, the attitude as reflected in Ext. R4(h) was totally a wrong one and therefore, that District Collector was only correcting that erroneous approach, when he issued Ext. P7. Therefore, if one is to take Ext. P7 as an order correcting the error that he has committed in Ext. R4(h), the District Collector cannot be faulted for the exercise of power in that behalf.

16. Of course, even if the manner of exercise of power is upheld, it is not as though the petitioners are without any remedy. If by reference to facts and evidence, the petitioners can prove that the orders are illegal, that liberty has to be conceded to the petitioners.

Thus on an overall appreciation, I am satisfied that there is nothing to interfere with Ext. P7 in a proceeding under Article 226 of the Constitution of India. The writ petitions will stand dismissed, but however, without prejudice to the right of the petitioners to approach civil court for appropriate reliefs.

ANTONY DOMINIC
JUDGE

jan/-